IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 342 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAURASHTRA TAXI OWNERS UNION

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 342 of 1993

MR RR TRIVEDI for Petitioner No. 1-8

Mr. MA Bukhari, AGP for Respondent No. 1-6

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 27/02/2003

ORAL JUDGEMENT

The only challenge made by the petitioners in this petition by invocation of powers under Section 207 of the Motor Vehicles Act is against seizure of taxi cabs or taxi cars in the State of Gujarat by the respondent authorities as absolutely illegal, arbitrary, discriminatory and without any authority of law. It is the case of the petitioners that they were plying their

taxi cabs in the State of Gujarat under the Contract Carriage Permit granted to them in Form No. P.CO.P. under Rule 70(7)(iii) of the Motor Vehicle Rules. The petitioners have alleged in the petition that the officers and servants of the respondent authorities detained their vehicles along with the passengers under the pretext that the passengers travelling in the taxi were more than in number as prescribed in the permit. The seizure of the motor vehicles cannot be made by exercising the powers under Section 207 of the Motor Vehicles Act.

2. Mr. RR Trivedi, learned advocate appearing for the petitioners has invited my attention to the relevant provisions contained in Section 207 (old Section 129-A) of the Motor Vehicles Act, 1988. The Proviso to Section 207 of the Act refers to the reasonable belief of the responsible officer for the purpose of seizure of the vehicles in contravention of Section 3 or Section 4 or Section 39 or without the permit required by sub-section (1) of Section 66 of the Act or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used. Section 3 of the Act deals with necessity for driving licence, whereas Section 4 deals with age limit in connection with driving of motorcycles. Section 39 deals with necessity for registration and Section 66 deals with necessity for permits. After inviting my attention to these relevant provisions of the Act, Mr. Trivedi has cited the decision of the Hon'ble Supreme Court in the case of State of Maharashtra & Ors vs. Nanded-Parbhani Z.L.B.M.V., Operator Sangh - 2000(1) Crimes 174 (SC), wherein identical issue was involved and the true ambit and scope of Section 207 of the Act was discussed by the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that,

> "8. The aforesaid power of seizure has been conferred upon the appropriate authority, which power is in fact a sovereign power of the State and has been delegated to the police officer in discharge of their duties of law enforcement and in the enforcement of an orderly society. The Power, therefore, is required to be exercised with care and caution and the power has to be exercised only when the pre-condition for exercise of power is fully satisfied."

The Hon'ble Supreme Court has further held, after

discussing about the principles of construction of statute and on examining the provisions of Section 207 of the Act that:

"The police officer would be authorised to detain a vehicle, if he has reason to believe that the vehicle has been or is being used in contravention of Section 3 or Section 4 or Section 39 or without the permit required under sub-section (1) of Section 66 or in contravention or any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used. In the case in hand, we are not concerned with the contravention of Section 3 or Section 4 or Section 39 or sub-section (1) of Section 66 and we are only concerned with the question of contravention of the condition of permit. Reading the provisions as it is, the conclusion is irresistible that the condition of permit relating to the route on which or the area in which or the purpose for which the vehicle could be used if contravened, would only authorise the police officer to detain the vehicle and not each and every condition of permit on being violated or contravened, the police officer would be entitled to detain the vehicle."

3. The Supreme Court further held, while rejecting the contention raised by the learned counsel appearing for the State of Maharashtra to the effect that "the purpose would only refer to a contingency when a vehicle having a permit of stage carriage is used as a contract carriage or vice versa or where a vehicle having a permit for stage carriage or contract carriage is used as a goods vehicle and vice versa. But carrying passengers more than the number specified in the permit will not be a violation of the purpose for which the permit is granted. If the legislature really wanted to confer power of detention on the police officer for violation of any condition of the permit, then there would not have been the necessity of adding the expression "relating to the route on which or the area in which or the purpose for which the vehicle may be used". The Hon'ble Supreme Court has finally concluded by observing that carrying passengers beyond the number mentioned in Column 5 of Form of permit, indicating the seating capacity would not be a violation of the conditions of permit relating to either the route or the area or the purpose for which the permit is granted.

4. Since the issue regarding exercise of powers under Section 207 of the Motor Vehicles Act is squarely covered by the aforesaid decision of the Hon'ble Supreme Court, and since Mr. Bukhari, learned AGP appearing for the respondent authorities, is not in a position to distinguish the facts of the abovereferred decision of the Hon'ble Supreme Court with the facts of the present case, it is required to be held that the respondent authorities are not justified in invoking the powers under Section 207 of the Motor Vehicles Act and thereby seizing the vehicles only on the ground that the seating capacity of the passengers exceeded the numbers prescribed in the permit granted by the respondent authorities. In this view of the matter, the present petition is allowed to the above extent.

5. Since the other reliefs sought for in this petition are not pressed, the Court has not dealt with those reliefs and this judgment is therefore confined only to the above aspect of the matter. The petition is accordingly disposed of. Rule is made absolute to the above extent, with no order as to costs.

rmr. [K.A. Puj, J.]